THE OVERLAP OF IMMIGRATION LAW AND STATE CIVIL LAW MATTERS

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I. INTRODUCTION

A. Why is Immigration Law Relevant to State Courts?

1. Courts are encountering increased numbers of non-citizen litigants varying ethnic and racial backgrounds and life experiences.
    a. The U.S. population is becoming increasingly diverse
        i. According to the U.S. Census Bureau, 12.1 percent of Washington's population is foreign-born. [1]
2. State court decisions can have a substantial, if not determinative impact on immigration law issues.
    a. In some situations, state court decisions will directly determine whether an individual is eligible to participate in the immigration process.
    b. The foreign-born in the United States have a variety of immigration statuses: they may be naturalized United States citizens, lawful permanent residents ("green card" holders), temporary visa holders, undocumented, or in a number of less common categories.
    c. Those who are the most significantly impacted by state court decisions often do not have lawful immigration status, but might qualify to apply for such status
    d. Others who have lawful status may also be impacted by state court orders when the orders affect an individual's ability to maintain her or his legal status.
    e. Understanding the immigration consequences of state court decisions may assist the court in understanding many factors influencing litigants' choices and decision-making.
3. In which types of civil cases might the issue of immigration status arise?
    a. In family law and domestic violence matters decisions may limit or expand a litigant's immigration options
        i. Timing of a dissolution and adoption decrees
        ii. Finding of the invalidity of a marriage
        iii. Findings of abuse, neglect or dependency
        iv. Providing protection from abuse

II. DOMESTIC RELATIONS ISSUES

A. FAMILY BASED IMMIGRATION

1. How is family-based immigration relevant to state courts?

a. Family based immigration comprises the largest percentage of legal immigration to the United States. [2]
    i. Almost two-thirds of legal immigrants arriving through sponsorship by a spouse, parent, child, or sibling.

[1] *See*, http://quickfacts.census.gov/qfd/states/53000.html
[2] *See*, http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf

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b. History
    i. Early American immigration law gave male citizens and permanent residents over the immigration status of their immigrant wives.
    ii. US Citizen and permanent resident women could not file applications for their male immigrant spouses.[3]
    iii. The Immigration and Nationality Act of 1952, Pub.L.No. 414, 66 Stat. 166 (1952)(INA) created the roots of today's visa quota system with the "gender neutral" family-based visa system, making it possible for either husband or wife to petition for a non-citizen spouse.
        a. These provisions only applied (and currently only apply) to heterosexual spouses.
    iv. Conditional Permanent Residence ("CPR")
        a. In 1986, as a result of Congressional concerns about marriage fraud, the spousal petitioning process was modified, and the status of Conditional Permanent Residence was created. See, Immigration Marriage Fraud Amendments, Pub. L. No. 99-639, 100 Stat. 3537 (1986).
        b. Joint Petition
            1. If a couple is married for less than two years at the time the immigrant spouse obtains her permanent residence, she is granted conditional status.
            2. CPR's and their spouses must file a *joint* petition to remove the conditional status two years after the immigrant spouse obtains permanent resident status.
            3. Failing to file the joint petition could result in the denial of permanent residency and the initiation of removal proceedings against the non-citizen spouse. INA §216(c)(2); 8 U.S.C. §1186a(c)(2)
        c. Effect of Joint Petition on cases involving spousal abuse
            1. The joint-petitioning requirement had the unfortunate effect of placing battered immigrants at the mercy of their abusers and at risk of continuing abuse.
    v. Spousal Abuse waivers
        a. In 1990, the Immigration Act of 1990 created important amendments to the family-based immigration laws, allowing "good faith" and "battered spouse/ extreme cruelty" waivers, to the joint petitioning requirement.

[3] Non-citizen women generally became U.S. citizens by marriage to a U.S. citizen or through a non-citizen husband's naturalization. The only women who did not derive citizenship by marriage under this law were those ineligible for naturalization because of their race. Act of Feb. 10, 1855 (§1994, *rev.* § 2172) ("[a]ny woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.); *In re Rionda*, 164 F. 368 (1908); ***See also,*** Expatriation Act of 1907, 34 Stat. 1228 (1907) (defines the citizenship of women married to foreigners by stating that women assume the citizenship of their husbands, and a woman with US citizenship forfeits it if she marries a foreigner, unless he becomes naturalized) *partially repealed by* The Cable Act of 1922, 42 Stat. 1021 (1922) (allows American women who marry European men to retain their U.S. citizenship, but American women who marry Asians will still forfeit their American citizenship).

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1. The battered spouse waiver was included in Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 codified at 8 U.S.C. §1186a(c)(4)

vi. Violence Against Women Act ("VAWA")

a. Beginning with the Violence Against Women Act (VAWA) of 1994, Congress has amended the immigration statutes numerous times to expand protections for battered spouses and other victims of domestic violence and violent crimes.

1. See, Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-1955, 8 USC §§ 1151, 1154, 1186a, 1186a note, 1254, 1245 (1994) (hereinafter VAWA); Illegal Immigration Reform and Responsibility Act of 1996, Division C of the Omnibus Appropriations Act of 1996 (H.R. 3610), Pub. L. No. 104-208, 110 Stat. 3009 (hereinafter IIRAIRA); Pub.L. No. 106-386, Division B of the Victims of Trafficking and Violence Protection Act of 2000 (H.R. 3244), Pub.L. No 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005, (H.R. 3402).

2. MARRIAGE AND TERMINATION OF MARRIAGE

Because many applications for immigration status are based on a legal family relationship, one primary impact of a court declaring a marriage invalid, or ordering dissolution of a marriage is that spouses and/ or children may jeopardize their immigration status as a result of the order.

a. Good Faith Marriage

1. Why is "good faith marriage" important?
    a. In order for a non-citizen to obtain lawful permanent residence through his or her spouse, immigration law requires that the marriage was not entered into for the purposes of evading immigration law. INA §204(c); 8 U.S.C. §1154(c).
    b. To immigrate based on the marital relationship, it must be valid under the law of the state or country, and then under the Immigration and Nationality Act.
        1. Immigration law does not recognize same-sex marriage under the Defense of Marriage Act (DOMA), P.L. 104-199, 110 Stat. 2419 (1996),which defined marriage as a union between a man and a woman.
2. Even some marriages that are not valid may still fulfill immigration requirements provided there is "good faith"
    a. In certain instances involving abused spouses, if the marriage was not valid because a prior or concurrent marriage of the abusive U.S. citizen or Permanent Resident sponsor was not terminated, but the non-citizen applicant believed the marriage was valid, an application for status as an ***intended spouse*** may still be filed. INA §204(a)(1)(A)(iii)(II)(aa)(BB); INA§204(a)(1)(B)(ii)(II)(aa)(BB)

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b. Marriage to a U.S. Citizen sponsor results in conditional residence (CR), unless it is more than two years old at the time of granting the immigrant status. INA §216(c).

b. Termination of Marriage-Dissolutions and Declarations of Invalidity

1. Spouses of U.S. Citizens
    a. Generally, if an individual is already a lawful permanent resident, the dissolution of his or her marriage will have no impact on his or her immigration status.
    b. However, if an individual obtained his or her lawful permanent status through marriage, and then subsequently divorces is barred from petitioning for a new spouse for five years
    c. Exception if he or she can prove that the first marriage was bona fide, by clear and convincing evidence. INA §204(a)(2)(A)(ii).
2. Effect on conditional residence
    a. In the case of a non-citizen who has conditional residence (CR), a dissolution of marriage ***will*** impact his or her immigration status.
        i. This involves situations where a U.S. citizen spouse filed a petition for the immigrant spouse soon after the marriage.
    b. As long as permanent residence was not obtained more than two years after the date of marriage, the permanent resident status is ***conditional*** for two years from the date of status and the spouse is referred to as a conditional permanent resident ("CPR"). 8 U.S.C.§ 1186.
        i. Within the 90 days prior to the expiration of the two years, so long as the marriage has not legally terminated, the parties must file a joint petition to remove the condition, Form I-751.
        ii. If the petition is not filed, the permanent resident status terminates. 8 C.F.R.§ 216.4.
    c. Waiver of Joint Petition
        i. Alternatively, the immigrant spouse can file to waive the requirement of a joint petition. 8 U.S.C.§1186(c)(4); 8 C.F.R.§216.5.
        ii. Grounds for waiver are as follows:
            a. Extreme hardship if the non-citizen is removed, where the hardship arose during the conditional residence period.
            b. Marriage was entered into in good faith, but has terminated.
            c. Abuse of spouse or child: "battered by or was the subject of extreme cruelty perpetrated by his or her spouse and the beneficiary was not at fault in failing to meet the petitioning requirements."
                1. Immigration regulations define this to include psychological or sexual abuse or exploitation. 8 C.F.R.§ 216.5(e)(3)(i).

3. Spouses of Permanent Residents and Other Family Visa Preference Categories
    a. Dissolution of Marriage

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i. Dissolution of marriage may also impact the immigration status of spouses and children of lawful permanent residents
ii. There is a long waiting period between the time a family visa petition is accepted and the time a visa becomes available.
iii. If the marriage terminates before a visa is available and the immigrant spouse can get her/his permanent resident status, s/he is no longer eligible for the immigration status s/he applied for.
iv. There is one major exception for those who are eligible to self-petition under the Violence Against Women Act ("VAWA").
    a. If the marriage is terminated for any reason after a VAWA self-petition is filed, the termination will not affect the application. INA§204(a)(1)(A)(vi) and INA §204(a)(1)(b)(v)(I).
    b. Even if the marriage is terminated prior to the filing of the VAWA self-petition, if the application is filed within two years of the termination and there is a showing of a "connection" between the dissolution of marriage and domestic violence, the individual may still be eligible for immigration benefits under VAWA. INA §204(a)(1)(A)(iii)(II)(aa)(CC); INA§204(a)(1)(B)(ii)(II)(aa)(CC)

4. Spouses of Nonimmigrant Visa Holders
    a. What is a non-immigrant visa?
        i. A non-immigrant visa gives a noncitizen the right to enter and remain in the United States temporarily for a specific purpose.
            a. Common non-immigrant visas are for visitors for business or pleasure ("B" visas); students or scholars ("F" or "J" visas); professional workers ("H" visas); and fiancées of U.S. citizens ("K" visas). 8 USC § 1101(a)(15), e.g. § 1101(a)(15)(B) for visitors' visas.
        ii. Derivative beneficiaries of non-immigrant visas
            a. In some cases the spouse and children under the age of 21 of the principal visa-holder will be permitted to enter on the visa as well.
            b. They are not necessarily authorized to work or study, even if the principal visa-holder is.
            c. The derivative family member's status is depending on the qualifying relationship to the principal nonimmigrant visa holder, and the principal visa holder's ongoing valid visa.
    b. Effect of Termination of Marriage
        i. If the marriage terminates, the derivative spouse or dependent is no longer entitled to the visa status.
        ii. If the principal visa-holder becomes deportable or otherwise violates the provisions of the visa, he or she as well as the derivative beneficiaries will lose status.
    c. Impact on Naturalization

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i. Generally, a permanent resident who has resided in the United States for five years can apply to naturalize to become a U.S. citizen.
    1. Unless they obtained legal permanent residence as the spouse of an abusive U.S. Citizen. 8 U.S.C. §1430.
ii. Permanent residents who are married to U.S. citizens can apply for citizenship if s/he has been in "marital union" with the citizen spouse for three years.
iii. Benefits of U.S. Citizenship
    a. Some benefits may impact the dissolution of marriage
        i. the right to seek employment with the federal government,
        ii. the right to apply for many forms of government benefits that may otherwise be unavailable to permanent residents or other non-citizens.
        iii. The ability to petition to bring in parents without being consigned to a waiting list.
        iv. No gift/estate tax marital deduction exists for non-citizen spouses.
            a. There are many long-term permanent resident spouses of citizens who are not aware of this significant tax consequence, though if naturalization is not an option, there is a trust device that may avoid these consequences.

d. Effect of Declarations of Invalidity
    i. Petitions for declarations of invalidity generally have the same legal effect as dissolutions of marriage
    ii. A finding of invalidity due to fraud might be problematic for a non-citizen who must prove "good faith marriage."
    iii. It is not unusual for individuals to petition for declarations of invalidity of marriage based on fraud, alleging that a non-citizen fraudulently induced them into marriage for immigration purposes.
    iv. Further judicial inquiry is warranted because the state court's findings are binding on the Immigration Court. See, ***Nakamoto v. Ashcroft,*** 363 F. 3d 874, 883 (9th Cir. 2004) (Court held that the final judgment of the state family court finding that the immigrant made misrepresentations with the intent to induce the husband to marry her is entitled to full faith and credit).

c. Economic Issues

1. Affidavits of Support and Maintenance
    a. Almost all immigrants who are applying to obtain lawful permanent residence through a family member must submit an Affidavit of Support.
    b. In filing the Affidavit of Support, a U.S. citizen or legal permanent resident accepts responsibility for financially supporting the non-citizen relative.

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i. The Affidavit of Support is used to show USCIS that the immigrant has adequate means of financial support throughout his or her status as a permanent resident and will not become a "public charge"

ii. "Public charge" is an immigration law term that describes someone who needs government assistance to survive, or will likely need government assistance to survive in the future.

iii. The Affidavit of Support creates a contractual obligation and can be enforced by the sponsored immigrant, the local, state or federal government, or any other agency providing a means-tested public benefit for the immigrant. 8 C.F.R. §213a.2(e)(2)(i).

a. The contract is only enforceable if the government agency seeking enforcement has published that the benefit is a means-tested public benefit before the benefit was first provided to the immigrant. 71 FR 35732,35742(June 21, 2006)

b. This responsibility lasts until the non-citizen either naturalizes, or is credited with forty (40) hours of work under the Social Security Administration. INA§213A(a).

c. Some courts have found the Affidavit of Support enforceable and have ordered support payments to a former spouse. See, ***Shumye v. Felleke,*** 555 F.Supp.2d 1020(N.D. Cal.2008); ***Stump v. Stump***, 2005 WL 2757329 (N.D. Ind. Oct. 25, 2005)

d. As part of a family law property settlement, the sponsored immigrant may surrender his or her right to sue to enforce the Affidavit of Support. 71 F.R. 35732, 35740 (June 21, 2006)

2. Child Support

a. Courts may also be faced with determining and enforcing child support when the litigants or the children of the litigants are non-citizens.

b. Enforcing child support may be a particular problem when the obligor parent does not reside in the United States.

c. Hague Convention

i. On November 23, 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

ii. Convention provides a cooperative system for the child support authorities of contracting nations to recognize and enforce foreign child support decisions

a. For a current listing of reciprocating countries, go to http://www.acf.hhs.gov/programs/cse/international/

d. US Passport Agency Hold for Failure to Pay

i. The U.S. State Department can also revoke the U.S. passport for delinquent child support owed over $2,500.00 from US Citizens. 22 C.F.R. §51.60(a)(2)

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ii. In order to reinstate the passport, the obligor must demonstrate to the State Child Support Enforcement Agency the obligation has been fulfilled, and the State will forward the relevant information to the Federal Child Support Enforcement Division, to be then forwarded to the U.S. Passport Agency.

3. Ability to Work in the United States
   a. In determining ability of a non-citizen parent or spouse to pay or maintain child support or maintenance, the court will be faced with determining the party's income.
   b. In some cases, non-citizens may face economic barriers due to a lack of employment authorization from CIS, or an inability to obtain certain public benefits due to their immigration status. *See, e.g.*, Washington Administrative Code Sec. 388-424-001, et. al, 8 U.S.C, §§1601 et. al.
   c. In dividing property and awarding child support or maintenance, courts may consider the length of time a non-citizen immigrant may require financial support for her/himself and her/his children; or the length of time it will take for the immigrant to be able to work.

B. FAMILY COURT

1. Parenting Plans

a. Parenting Plans Where a Noncitizen Parent is in Deportation ("Removal") Proceedings and/or is Going to be Removed

1. It is not uncommon that a noncitizen parent involved in a family court matter will be in proceedings facing removal from the United States.

2. Lack of participation of a parent in the proceedings cannot be assumed to show that s/he has already been removed, or that there is a lack of interest in pursuing residential time or custody of the child(ren)
   a. Many parents have not yet been removed but may still be involved in removal proceedings, which can sometimes take years to resolve (often conflicting with the strict timelines of child custody proceedings).
   b. It is possible that the parent might have viable defenses against removal.

3. Immigration Detention
   a. During removal proceedings, parents may be held in immigration detention centers far from their residence, and thus have no way of meaningfully participating in the parenting plan case.
   b. Because their whereabouts are often unknown by the court and they are detained, parents may not receive notices about the parenting plan proceedings, may not have phone access, or know how to contact their legal representative.

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c. Even where a parent might have knowledge about a pending child custody case, immigration authorities may hinder their participation in the case.

d. Due to these obstacles facing detained parents, local courts should ensure that they receive all notices, are in communication with their attorneys, and that court orders are issued and served upon immigration authorities to ensure that they participate in court hearings in person, or at the least, telephonically.[4]

4. Removal of non-citizen parents from the U.S.

a. Though the person has a U.S. citizen child, it *does not* automatically *stop the removal*, although in some cases the existence of a citizen or permanent resident child may be a positive equity if the parent is eligible to apply for some defense to removal.

b. In some cases that even if the parent is removed, he or she may possibly have an option to legally return to the United States in the future.

b. Undocumented Parents -Not in Removal Proceedings

1. Just because a person is undocumented does not mean that he or she faces imminent removal from the United States.

a. Millions of undocumented persons have lived for decades in the United States, often acquiring lawful immigration status later in life.

b. When a U.S. citizen child reaches the age of 21, she or he may be able to petition for the parent to become a permanent resident, whether the parent is living in the United States or abroad. INA §201(b)(2)(A)(i)

c. Parenting Plans Involving Non-Citizens and Allegations of Domestic Violence

1. Abusers may threaten to obtain legal custody of the children, telling immigrant victims that they will lose their children due to their lack of immigration status

2. Evidence relating to immigration status

a. Abusers may attempt to introduce evidence about the victim's immigration status, frequently intended to control the battered immigrant victim. *See, e.g*, **Kim v. Kim,** 208 Cal. App. 3d 364 (1989).

1. Reinforcement of the abuser's threats that to have the victim deported if s/he does not comply with her/his demands.

3. Immigration status and parenting functions

a. A parent's immigration status in of itself is irrelevant as to which parent is more likely to be able to perform the day-to-day parenting functions

b. Claims that this information is necessary related to the threat of flight with the children should be supported by evidence demonstrating that the threat of

[4] The location of detained noncitizen parents can be tracked at: https://locator.ice.gov/odls/homePage.do. (A person can be tracked by name and date of birth or by their immigration identification number (A#). The country of birth is required for either search.)

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flight is real, as any litigant would have to do in any other parenting plan matter, whether across state, or international borders.

c. The immigration status of the parent is not a determining factor as to whether an individual is likely to flee with the children.
d. Upon separation, abusers may engage in protracted custody or visitation litigation, as a means to control their former partners. *See*, L. Bancroft & J. Silverman, ***The Batterer as Parent,*** Sage Publications, 2002, Chapter 5
    1. Abusers may harass victims during court proceedings by repeatedly filing motions to modify temporary parenting arrangements; by repeatedly requesting continuances to force victims to return to court, jeopardizing their employment; stalking victims from court home or to work; and by filing false complaints with Child Protective Services.
    2. Explicit court orders can reduce abusers using court proceedings or the legal system as a battleground for control. See Section IV.B, *infra* for more information about protective orders.

4. Judicial Findings
    a. Findings of domestic abuse in judicial proceedings are relevant to the best of interests of children. R.C.W. §26.09.002; R.C.W. §26.09.187; R.C.W. §26.09.191.
    b. In addition, they may be highly relevant in future immigration cases in that they are helpful to be able to prove battery or extreme cruelty in the immigration case (see section V. below).
    c. Findings of abuse, restrictions in residential placement or visitation due to abuse, and restraint provisions in custody orders may also affect a litigant's ability to prove the requirement of "extreme hardship" in certain types of removal cases.
        1. Findings that the abuser has threatened to harm the children might help establish that removing the battered parent or children from the legal protections provided by U.S. courts would cause "extreme hardship"
            a. This is relevant in a removal case, or in the adjudication of a waiver allowing a non-citizen to obtain lawful status.
        2. Findings with respect to a child's best interest being primary residential placement with the non-abusive parent might be used to demonstrate extreme hardship to either the parent or the child due to their long term separation.
    d. Court findings may affect a battered immigrant's ability to meet the "good moral character" requirement for an immigration case.
        1. If there has been a finding that a non-citizen "failed to protect" the child from abuse, or failed to provide support for his or her children, the individual may face difficulty in establishing that s/he has good moral character for the purposes of the immigration matter.

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d. International Parental Kidnapping and Custodial Interference

1. When children are abducted and taken to another country it becomes extremely difficult to get them back to the U.S.
    a. Battered immigrants often decide to remain with their abusers in order to prevent international abduction.
    b. Courts should consider allegations concerning kidnapping seriously and issue orders to deter an abuser's kidnapping attempts.[5]
2. Blocking passport issuance to citizen children.
    a. To prevent removal of U.S. citizen children out of the country in violation of custody orders, federal law provides for passports to be blocked by the filing of the court orders with the State Department. 22 C.F.R. §51.27, 61 Fed. Reg. 6505 (Feb. 21, 1996).
    b. There must be an order from a court of competent jurisdiction, i.e. a U.S. state court or foreign court having jurisdiction over child custody issues consistent with the principles of the Hague convention on the Civil Aspects of International Child Abduction and the Uniform Child Custody Jurisdiction and Enforcement Act.
    c. The court must be the court in the state where the child resides or place of habitual residence.
    d. The order must:
        1. Grant sole custody to the objecting parent, or
        2. Establish joint legal custody, or
        3. Prohibit the child's travel without the permission of both parents or the court, or
        4. Require the permission of both parents or the court for important decisions unless permission is granted in writing.
3. Penalties for violation of US custody decrees
    a. Non-citizens who interfere which child custody decrees may be excludable from entry to the U.S. and not eligible for visa issuance, or adjustment of status to permanent residence, unless the child is located in a foreign country that is a signatory to the Hague Convention. INA §212(a)(9).

2. Special Immigrant Juvenile Status

Children under the jurisdiction of dependency, delinquency or guardianship courts who will not be reunified with their parents due to abuse, neglect or abandonment can apply for permanent residency with "Special Immigrant Juvenile Status" ("SIJS").

An undocumented child who is declared dependent upon a juvenile court or committed to the Department of Social and Health Services, or to court-appointed individuals or entities, whose "reunification with one or both of the immigrant's parents is not viable due to abuse,

[5] Catherine F. Klein & Leslye Orloff, ***Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law***, 21 Hofstra L. Rev. 801, 1027 (1993).

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neglect, abandonment, or a similar basis found under state law" and whose return to their country of nationality or last habitual residence is not in his or her best interest, may be able to obtain Special Immigrant Juvenile Status. INA § 101(a)(27)(J).

a. Dependency Proceedings

1. When a juvenile court accepts jurisdiction to make a decision about the care and custody of a child, for immigration purposes, the child is dependent on a juvenile court.

a. A juvenile is dependent upon the court if she "[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court 8 CFR § 204.11(c)(6).
    1. Establishing dependency on a juvenile court does not require CPS involvement or a decision to place the child in any particular form of care.

b. Under Washington law, a dependency petition is made pursuant to RCW 13.34.030(5). Under that provision, a child may be declared a dependent of the state if:
    1. The child has been abandoned, as defined under RCW § 13.34.030(1)….;
    2. The child is abused or neglected as defined in RCW § 26.44 …by a person legally responsible for the care of the child; or
    3. The child has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

c. Dependency Orders for SIJ purposes
    1. should cite to RCW § 13.34.030(5) and include the following findings:
        a. The child is declared dependent on a juvenile court, or the court has legally committed the child to or placed the child under the custody of a state department or agency;
        b. Reunification of the child with one or both of the parents is not viable;
        c. Return to the child's home country is not in the child's best interest (and it is in his best interest to remain in the U.S.); and
        d. These findings and determinations were made due to abuse, abandonment, neglect, or some other similar basis under state law, by the child's parent, guardian, or other custodian

b. Other Juvenile Court Proceedings

1. Children in guardianship or delinquency proceedings who have been appointed a guardian by the court, or who are under the custody of the State can also be considered dependent on juvenile court.

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a. Guardianship

1. A child for whom a guardianship is established may qualify for Special Immigrant Juvenile Status even if s/he was never formally removed from a parent by the state or placed in foster care.
2. Not only children formally placed in foster care are considered dependent on a juvenile court
3. Qualifying guardianships may be established through any court empowered under state law to make decisions regarding the care and custody of children. INA § 101(a)(27)(J), as amended by the Trafficking Victims Protection Reauthorization Act of 2008 §235(d), Pub.L.No. 110-457, 122 Stat. 5044(2008), §235(d).

3. Juvenile Court Jurisdiction

a. State Court Jurisdiction Over Minor Until Legal Status Granted

1. Immigration regulations pre-dating the current statute state that the court must retain jurisdiction over the application until the CIS actually grants permanent residency.

2. While this requirement read in tandem with recent statutory changes appears to eliminate the continuing jurisdiction requirement altogether, jurisdiction over the child should be retained by the court until there is clear guidance issued by CIS.

3. While CIS must adjudicate the first part of the SIJS application within 180 days, the second part of the application may take longer to adjudicate, potentially months and over a year.

4. This can result in courts retaining jurisdiction longer than they normally would, or having to re-impose jurisdiction.

b. Case closure

1. If continuing to retain court jurisdiction in a case is not feasible, where applicable, courts should enter specific language in the juvenile court order terminating jurisdiction of the case that states the case is being closed due to age.

4. Children Held in Immigration Detention

a. Collaboration with the Office of Refugee Resettlement's ("ORR") (within the Department of Health and Human Services

1. An unaccompanied non-citizen child already in Immigration custody before proceedings have been initiated in juvenile court means that a juvenile court judge ***cannot*** make custody or care decisions about the child without the permission of ORR.
2. The SIJS statute states that "no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction." INA § 101(a)(27)(J)(iii)(I), 8 USC § 1101(a)(27)(J)(iii)(I).

b. Specific consent is only required where a juvenile court will deal with a child's custody

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or placement status.

1. Specific consent is not required for a juvenile court to take jurisdiction in order to enter SIJS findings or other aspects of a child's case that do not deal with custody or placement.

c. Requests for consent for a juvenile court to order a change in custody or placement determination over a child in ORR custody must be made in writing to ORR.[6]

5. Adoption

a. Adoption Can Create a Parent/Child Relationship for Immigration Purposes

1. Immigration law definitions
   a. The terms "parent" and "child" have specific legal meaning.
   b. Adopted children must meet certain requirements in order to be considered the "child" of the new parent in order to share any immigration benefits through the relationship
   c. To confer immigration status through a family immigration petition based on an adoption, the child:
      i. must have been adopted under the law of the child's residence or domicile while under the age of 16, and
      ii. must have been in the legal custody of and has resided with the adoptive parent for at least two years while under the age of 21. 8 USC § 1101(b)(1)(E)(i).
   d. If the adoption does not occur timely, the child will lose all immigration benefits he or she might have gained through the family relationship.
   e. The requirement that the child reside and be in the legal custody of the adoptive parent for two years before reaching the age of 21 can be fulfilled either before or after the completion of the adoption.
2. Once an adopted child is the "child" of a permanent resident or U.S. citizen, the adoptive parent can file papers for the non-citizen child to become a permanent resident.
   a. Even if the parent is not yet a permanent resident, as long as the parent/child relationship is timely created, the child will be able to take advantage of any future immigration status that the parent obtains, and vice versa

b. Sibling Adoption and Overseas Orphan Adoption

1. Exceptions to timing and residency requirements
   a. Siblings
      i. If natural siblings are adopted, only one sibling's adoption must be completed before the age of 16.

[6] For more information, go to, http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_alien_children.htm; Neufeld Memorandum, US CIS Interpretation of TVPRA, page 4

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ii. The other sibling or siblings' adoption may be completed any time up to their 18th birthdays.

iii. The two-year lawful custody requirement still applies. 8 USC § 1101(b)(1)(E)(ii).

iv. The siblings do not have to be adopted at the same time, and the younger sibling does not have to have met the two-year requirement before the older sibling is adopted.[7]

b. Overseas orphans

i. Another exception concerns adopted children who are classed as "orphans" under the Immigration & Nationality Act (INA).

ii. "Orphan" under immigration law has a different meaning from common usage.

a. To meet the definition of "orphan," the child must be residing outside the United States when the petition is filed.

b. The only children who come within this category are those who, with the help of prospective adoptive parents, entered the U.S. on a special orphan visa.

c. A typical noncitizen child in foster care waiting to be adopted does not qualify as an "orphan" for this purpose even if both parents are deceased:

1. Test is entry on an orphan visa. In addition, the adopting parent must obtain a valid home study before adopting and must meet many other requirements, including those of the Hague Convention (discussed below) if applicable. 8 CFR § 204.3.

d. Orphans are not subject to the two-year lawful custody requirement, although they do need to be adopted by age 16. 8 USC § 1101(b)(1)(F).

c. The Requirements of the Hague Convention[8]

1. Adoption and immigration laws are somewhat more complicated where the child is from a country that is a signatory to the Hague Convention

a. The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption establishes international standards for inter-country adoptions to prevent the abduction, sale, or trafficking of children.

[7] Interpreter Releases, Feb. 5, 2001 entitled "INS Updates Guidance on Minor Adopted Siblings Legislation," discussing Memorandum from Michael Pearson, Exec. Assoc. Comm'r, INS, HQADN 70/8.3

[8] For more information, see, "A Guide for Judges in Outgoing Cases Under the Hague Adoption Convention," William J. Bistransky, Division Chief for Intercountry Adoption, Office of Children's Issues, Bureau of Consular Affairs, US Department of State. Available at: http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5720885/k.4071/Hague_Convention_Requirements.htm; Online at adoption.state.gov; and Hague Adoption Convention Questions can be emailed to AdoptionUSCA@state.gov or directed to 1-888-407-4747 (for U.S. and Canada) and 202-501-4444 (outside the U.S. or Canada).

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b. Additional requirements that must be met for a child to immigrate through adoption.

c. United States became a signatory to this Convention on April 1, 2008.

d. As of April 1, 2008, the rules for adoption under the INA depend upon whether or not the adoptee child is from a country that is also a signatory to the Hague Convention.[9]

2. What does the Hague Convention Say?

a. Emphasizes the best interests of children and provides increased protections to children, birth families, and adoptive families.

b. Recognizes inter-country adoption as a valid means of finding homes for children who cannot return to their country of origin.

c. Under the Convention, both children abroad and those already in the U.S. can be adopted by persons located within and outside of the U.S. A child who is already in the U.S. as a parolee, nonimmigrant, or even in unlawful status may be able to be adopted under the Convention.

3. Stricter Hague Convention provisions apply to cases involving children that come from countries that are signatories to the Hague Convention [10] or where the children are deemed habitual residents of those countries and the adoption process is initiated on or after April 1, 2008. Fed. Reg. Vol. 72, No. 192. at 56834, 56850.

a. 8 USC §1101(b)(1)(G) and 8 CFR §204.301-.313 contain the basic requirements for an adoption under the Hague Convention

1. The child must be under 16 when the visa petition is filed

2. The child is a habitual resident of a Convention country (defined as the adoptee's country of citizenship unless the country of origin determines that the child is now habitually resident in the United States). Intercountry Adoption Act (IAA) of 2000, PL 106-279

i. A child who has already been brought to the U.S. will generally be considered to be habitually resident in the Convention country. 8 CFR § 204.2(d)(2)(vii).

ii. If the child is deemed to be habitually resident of the U.S., the Convention rules do not apply. 8 CFR § 204.2(d)(2)(vii)(F).

3. The child has no parents or both parents are unable to provide proper care, or sole or surviving parent or guardian is unable to provide care; and

4. All parents or guardians give written irrevocable consent to termination of legal relationship to the child, and emigration and adoption.

4. Immigration Process

a. Preliminary Requirements

[9] For a list of countries who have signed onto the Hague Convention go to: http://www.travel.state.gov/family/adoption/convention/convention_4197.html.

[10] There are some Hague Convention countries that the United States is no longer processing adoptions from, such as Cambodia and Guatemala. See http://adoption.state.gov/hague/overview/countries.html.

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1. CIS must determine that the adoptive parents are suitable before authorities in other countries allow or place the child with the parents for adoption.
    a. Generally includes a home study
2. The other country must also agree that the adoption is in the best interests of the child.

b. The U.S. must then decide, before the adoption takes place, that the Convention and the U.S. immigration requirements are met.

c. While children who are unlawfully present in the U.S. can be adopted under the Convention, they must return to the country of origin to obtain a visa after the visa petition (I-800) is approved.
    1. Without the visa, they cannot adjust their status.

d. The Child Citizenship Act/ Automatic US Citizenship?

Even children who already have lawful permanent residence in the United States may need their adoption to be completed before their 16th birthday, so that they will qualify for automatic U.S. citizenship derived from a parent. United States citizenship confers many benefits beyond permanent residency.

1. Circumstances where a child automatically becomes a U.S. citizen where adoption is prior to 16th birthday
    a. While under the age of 18, the following three events occur in any order
        1. the child becomes a permanent resident;
        2. the child is legally adopted by a U.S. citizen before she reaches the age of 16, and has resided at any time in the legal custody of the citizen for two years;
        3. and the child currently resides in the legal and physical custody of the U.S. citizen parent. 8 U.S.C §1421.
    b. Where the Hague Convention rules of adoption apply, compliance is essential to meet the second prong requiring a legal adoption.

e. SIJS and Adoption

Children who are in adoption proceedings and who have been placed under the custody of "an individual … appointed by a state or juvenile court," can qualify for SIJS. For more information, see Section II.B.2, above.

3. Vienna Convention on Consular Relations and Family Court

a. What is the Vienna Convention?
    1. The Vienna Convention, which was ratified by Congress in 1969, was developed in an effort to establish friendly relationships between nations. 21 U.S.T. 77, 100-101.

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2. It includes descriptions of the role of the Consulate, which include protecting the interests of foreign nationals, issuing passports and travel documents, safeguarding the interests of minors who are foreign nationals, and representing or preserving the rights or interests of foreign nationals.
3. Of particular relevance to juvenile courts are the provisions relating to the Consulate performing the following diplomatic acts:
    a. Article 17-Acting as a representative of foreign nationals
    b. Article 36c-Visiting a foreign national who has been detained or who is custody
    c. Article 37b-Receiving information and participating in deciding who is to be appointed as the guardian or trustee in the interest of a minor

b. How Vienna Convention provisions may impact a family court case:
    1. Parent/family notified of right to contact their foreign consulate in a timely manner
        a. When non-citizen child/ren are placed in protective custody, the State should be notifying the foreign consulate of future court proceedings.
        b. The foreign consulate may be involved in cases, eg participating in reunification related activities at the request of the parents such as team decision making, etc.
        c. When placing children outside the US, state agency may contact the consulate to do relevant home studies, etc.
        d. Consulate may also help in obtaining relevant documents relating to identity and travel for children,
        e. The consular office obtaining placement home studies or locating specialized services in their home country

c. Accordingly, courts can inquire into whether litigants' rights have been protected though dialogue with counsel for parents, children, and for the State.

IV. EVIDENCE OF A LITIGANT'S IMMIGRATION STATUS IN CIVIL MATTERS

A. ADMISSIBILITY OF EVIDENCE OF IMMIGRATION STATUS

In a hotly contested legal matter, it is not unusual for parties to utilize the full range of tactics to gain an advantage. The issue of a litigant's immigration status may be raised for various reasons, ranging from determining a litigant's ability to pay, to introducing character evidence that a litigant is patently untruthful.

1. Court Rules

However, there are ethical and legal limits on the utilization of unfair litigation tactics or prejudicial or inadmissible evidence. Rule 403 of the Washington Rules of Evidence, as well as the Federal Rules of Evidence, require courts to balance the risk of unfair prejudice against the probative value of the evidence seeking to be admitted.

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B. *Salas v. Hi-Tech Erectors,* 168 Wn. 2d 664 (2010)

2. Relevance of an injured worker's immigration status
    1. Case involved determining the amount of damages potentially due
        a. At trial, Mr. Salas had sought to exclude evidence of his immigration status. However, he also sought any future income lost due to his injury.
        b. The trial court admitted the evidence relating to his immigration status because it was relevant to whether Salas' future income would be in U.S. or Mexican currency.
    2. Court of Appeals Decision
        a. The Court of Appeals concluded that while evidence of immigration status should generally be inadmissible because it is highly prejudicial, Salas' immigration status was discovered late and the court was not provided with sufficient relevant authority on the issue. ***Salas v. Hi-Tech Erectors,*** 143 Wn. App. 373 (2008).
    3. Supreme Court Decision
        a. The Washington Supreme Court ruled that, "immigration status alone is not a reliable indicator of whether someone will be deported."
        b. When an undocumented immigrant is detained, he or may be subject to removal proceedings, but removal is not always the end result
        c. The Court found an abuse of discretion by admitting evidence of Salas' immigration status when Salas sought damages for lost future income.
        d. The Court found no evidence of pending removal proceedings which would call into question which country's currency to use.
            i. Salas had been living in the U.S. since 1989, without assistance since 1994, and had purchased a home and raised children in Washington State
        e. Although Salas' immigration status only marginally increased the likelihood he'd be deported, the Court found this reason enough to make his status relevant to the issue of lost wages.
        f. The Court then analyzed whether the low probative value of Salas' immigration status was substantially outweighed by the risk of unfair prejudice.
        g. The Supreme Court reversed and remanded the ruling, holding that the trial court abused its discretion by admitting evidence of Salas' immigration status:

> "We recognize that immigration is a politically sensitive issue. Issues involving immigration can inspire passionate responses that carry a significant danger of interfering with the fact finder's duty to engage in reasoned deliberation. In light of the low probative value of the immigration status with regard to lost future earnings, the risk of unfair prejudice brought about by the admission of a plaintiff's immigration status is too great. Consequently, we are convinced that the probative value of a plaintiff's undocumented status, by itself, is substantially outweighed by the danger of unfair prejudice." ***Salas,*** 168 Wn.2d at 673-74.

C. Immigration Related Intimidation or Harassment

In the course of contested legal matters courts may also learn that litigants threaten to, or

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actually seek, immigration enforcement action as a method to intimidate or harass the other party.

1. Employment Cases
    a. Recognition of retaliation as litigation strategy
    b. "Regrettably, many employers turn a blind eye to immigration status during the hiring process; their aim is to assemble a workforce that is both cheap to employ and that minimizes their risk of being reported for violations of statutory rights. Therefore, employers have a perverse incentive to ignore immigration laws a the time of hiring but insist upon their enforcement when their employees complain." ***Rivera v. Nibco,*** 364 F.3d 1057 at 1072 (9th Cir. 2004).

2. Domestic Violence Matters
    a. Violence Against Women Act[11]
        1. Congress recognized that perpetrators of domestic violence abusers often use *immigration status* as a tool of coercion and control. H.R. REP. NO. 103-395, at 25 (1993); S. REP. NO. 101-545, at 38-39 (1990).
        2. Congressional recognition of connection between control over immigration status and domestic violence because U.S. Citizen or Permanent Resident spouses can withdraw the petition filed with USCIS on the immigrant spouse's behalf at any time.
        3. One of the purposes of enacting VAWA immigration provisions was to allow "battered immigrant women to leave their batterers without fearing deportation." H.R. REP. NO. 103-395, at 26-7 (1993)
        4. "[T]he Battered Immigrant Women Protection Act of 2000. . . continues the work of the Violence Against Women Act of 1994 ("VAWA") in removing obstacles inadvertently interposed by our immigration laws that may hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident spouse to blackmail the abused spouse through threats related to the abused spouse's immigration status. . ."[12]
    b. Courts may face litigants seeking relief from immigration-related intimidation or harassment
        1. motions for restraining orders or injunction
        2. requests for protective orders when a party seeks immigration status through discovery
        3. motions in limine to prevent inquiry relating to immigration status at trial

3. Immigration Related Restraints
    a. Restraints related to immigration status
        1. Orders that do not unconstitutionally impinge on a litigant's free speech.
        2. To withstand constitutional scrutiny, a court must have made a specific determination that a particular course of conduct is unlawful, and provide injunctive relief that is narrowly crafted to prohibit repetition of the prohibited conduct. E.g, ***Bering v. Share,*** 106 Wn. 2d 212, 243 (1986), *cert dismissed* , 479 U.S. 1050(1987); ***In re***

[11] Pub. L. No. 103-322, Title IV, 108 Stat. 1902 (codified in scattered sections of 8 U.S.C.) [hereinafter VAWA]
[12] Violence Against Women Act of 2000 Section by Section Summary, 146 CONG. REC., S10, 195 (daily ed. Oct. 11, 2000).

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Marriage of Suggs, 152 Wn. 2d 74 (2004); ***In re Marriage of Meredith,*** 148 Wn. App 887 (2009); ***Madsen v. Women's Health Center, Inc.*** 512 U.S. 753, 763 n. 2 (1994).

3. Protection or restraining orders can offer crucial protection against continued harassment and domestic violence.[13]

b. Orders that include findings of abuse, including immigration related abuser or coercion provide critical evidence for battered immigrants who self-petition or file for cancellation of removal under VAWA
   1. Washington's protection order statute includes a "catch-all" provision that can be used creatively to obtain specific relief for battered immigrants. R.C.W. 26.50.060(f).
   2. In family law matters, courts can "make provision for any necessary continuing restraining orders." R.C.W. 26.09.050(1)
   3. These provisions can be used to address potential areas of continuing conflict, and remove barriers that prevent victims from leaving their abusers.

V. PROTECTIONS IN IMMIGRATION LAW FOR VICTIMS OF DOMESTIC VIOLENCE AND OTHER CRIMES

A. IMMIGRATION STATUS UNDER VAWA

1. VAWA Self-Petition

VAWA allows abused spouses, and children of lawful permanent residents or abused spouses, parents, and children of United States citizens to file petitions for lawful permanent residence without having to rely on their abusive spouse or parent to apply for them. INA§§ 204(a)(1)(B)(ii) and (iii); INA §§ 204(a)(1)(A)(iii), (iv), and (vii). Spouses also may file petitions based on abuse suffered by their children. In order to successfully self-petition under VAWA, an applicant must demonstrate under INA §§204(a)(1)(A)(iii), (iv), (vii), and (B)(ii) and(iii):

a. Battering or extreme cruelty inflicted by a U.S. citizen or lawful permanent resident on a spouse or child (or parent by a U.S. Citizen child);
b. Good faith marriage and residence with the United States citizen or lawful permanent resident spouse (or residence if a child or parent); and
c. Good moral character.

2. Cancellation of Removal Proceedings Under VAWA

VAWA also provides a defense for individuals placed in removal (deportation) proceedings. VAWA cancellation and self-petitioning are very similar, though an individual asserting a cancellation of removal defense has some additional elements to prove.

The most significant difference (aside from having to be in removal proceedings) is the requirement that the individual prove "extreme hardship" to herself, her child, or parent if she is removed from the United States. INA § 240A(b)(2)(E) Extreme hardship may also serve as a basis for an individual filing an application for a waiver of the joint petition to remove conditions

[13] Victoria Holt, et.al, "Civil Protection Orders and Risk of Subsequent Police-Reported Violence, ***Journal of the American Medical Association***, Vol. 288, No. 5, 589 (August 7, 2002).

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on residence. INA §216(c)(4)(A); 8 U.S.C. §1186a(c)(4)(A).

1. Evidence relating to abuse that applicants may submit to show extreme hardship includes:
    a. the nature and extent of physical abuse and the psychological consequences of battering or extreme cruelty;
    b. the need for access to U.S. courts, to the U.S. criminal justice system (including but not limited to the ability to obtain and enforce protection orders, criminal investigations and prosecutions), and to family law proceedings for child support, maintenance and custody;
    c. the need for social, medical, and mental health or other services for both self-petitioners and their children that are available here but are not "reasonably accessible" in self-petitioners' homelands;
    d. laws, social mores and customs in the home country that would ostracize or penalize the self-petitioner or her child for being the victim of abuse, for leaving the abusive situation, or for taking actions to stop the abuse, including divorce;
    e. the abuser's ability and inclination to follow his victims to the homeland and that country's inability or unwillingness to protect victims of abuse; and
    f. the likelihood that the abuser's family, friends or others would physically or psychologically harm the self-petitioner or her child. 8 C.F.R 240.58(c)

1. State court findings
    a. Can be relevant to an individual's immigration case by providing evidence to meet the statutory requirements under VAWA
        1. Protective orders and child custody orders may provide evidence regarding a battered immigrant's need to have ongoing access to the courts in the United States.
            a. A child custody order may be meaningless if the mother is deported, perhaps allowing the abuser the ability to reopen the custody decision without challenge
            b. The lack of enforcement of restraining or protection orders in the homeland is also something that immigration courts may consider in determining whether an individual would suffer extreme hardship if removed from the U.S.
            c. A protection order acquired in the United States often cannot be enforced abroad
            d. The effect on children of domestic violence in the household is also relevant in determining whether or not an individual will suffer extreme hardship.
                i. Extreme hardship to an applicant's children may qualify an individual for status
                ii. can be documented through the domestic relations or criminal case, whether the children are included in the application or not.
                iii. Testimony with respect to the children having witnessing domestic violence, and how this harms children may enhance the likelihood of the mother's application being approved.

B. VISAS FOR CERTAIN VICTIMS OF CRIME AND TRAFFICKING

The Victims of Trafficking and Violence Protection Act created two new categories of visas for immigrant crime victims. Both types of visas are designed to provide

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immigration status for individuals who are assisting or willing to assist authorities investigating specifically delineated crimes.

The provisions in the VTVPA also provide a route to apply for lawful permanent residences for individuals who obtain "T" and "U" visas.

1. "U" Visas for Victims of Crime

a. Eligibility Requirements -INA §101(a)(15)(U)(i)(II), added by VTVPA §1513(b).
   i. Showing of substantial physical or mental abuse
   ii. as a result of criminal activity
   iii. Cooperation with government officials investigating or prosecuting such criminal activity
   iv. The individual possesses information concerning the criminal activity.

b. Qualifying criminal activity- INA §101(a)(15)(U)(iii), added by VTVPA §1513(b).
   i. Generally violent crimes, including: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or
   ii. attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

c. Certification from a federal, state, or local law enforcement official, prosecutor, judge, or authority investigating criminal activity designated in the statute that states that the U visa applicant is being, has been or is likely to be helpful to the investigation or prosecution of designated criminal activity. INA §101(a)(15)(U)(i)(III) & INA §214(o)(1), added by VTVPA §1513(b) & (c).
   i. No requirement in law that an investigation in which the immigrant victim cooperated result in a prosecution, nor does it require that a prosecution result in a conviction.
   ii. State court judges are included in the list of individuals who can provide certifications for individuals who have provided statements that serve as the basis for a criminal investigation (e.g, the basis for a warrant) or for individuals who have served as witnesses in a criminal prosecution.

2. "T" Trafficking Visas

a. Eligibility Requirements- INA §101(a)(15)(T), added by VTVPA §107(e).
   i. Similar to the U visa, but designed specifically for those who have been subjected to sex trafficking or other "severe forms of trafficking."
   ii. Sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act." VTVPA §§ 103 (9)

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iii. "Severe" trafficking defined as: sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. VTVPA §§ 103(8).

iv. INA §101(a)(15)(T), added by VTVPA §107(e). Applicants for T visas must provide the CIS "any credible evidence" that they:
   a. are or have been victims of severe trafficking
   b. are physically present in the United States or at a U.S. port of entry on account of such trafficking
   c. have "complied with any reasonable request for assistance in the investigation or prosecution" of an act of trafficking act or be under age fifteen and
   d. show he or she would "suffer extreme hardship involving unusual and severe harm" if removed.

v. Some factors that might demonstrate "extreme hardship" include, but are not limited to:
   a. The age and personal circumstances of the applicant;
   b. Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;
   c. The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
   d. The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the severe forms of trafficking in persons or other crimes perpetrated against for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
   e. The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
   f. The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;
   g. The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and
   h. The likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections. 8 C.F.R. §214.11(i)(2) (2002)

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b. Cooperation with law enforcement
    i. Trafficking victims can qualify for T visas by working with state, local, or federal authorities, and by cooperating in the investigation of crimes ancillary to trafficking. Pub.L. No 109-162, Section 801(a) of the Violence Against Women and Department of Justice Reauthorization Act of 2005, (H.R. 3402).
c. State Court evidence
    i. Victims can establish that they would suffer extreme hardship in various ways, including but not limited to:
        a. protection from their traffickers in the form of protective or restraining orders,
        b. by awarding damages for harm suffered at the hands of traffickers, by providing a means for enforcement of these orders
        c. criminal punishment of traffickers for violations of the law which may not be available in victims' home countries.

VI. Restrictions on Immigration and Customs Enforcement (ICE) Enforcement

A. CIS OR ICE USE OF INFORMATION PROVIDED BY AN ABUSER

1. 8 U.S.C §1367
    a. Prohibits immigration officers from making adverse determinations on admissibility or deportability "using information furnished solely by" the applicant's abuser, an abusive member of the applicant's household, or someone who has abused the applicant's child. 8 U.S.C. §1367(a)(1).
    b. Prohibits the "use by or disclosure to anyone" except to other Department of Homeland Security officers "for legitimate . . . agency purposes," of information relating to self—petitioners, conditional residents requesting battered spouse waivers, and applicants for cancellation of removal. 8 U.S.C. §1367 (a)(2).
    c. Anyone who "willfully uses, publishes, or permits information to be disclosed in violation of this section shall be subject to appropriate disciplinary action *and subject to a civil money penalty of not more than $5,000 for each such violation*." 8 U.S.C. §1367 (c) emphasis added.
    d. These prohibitions and penalties apply to any act by a DHS officer or trial attorney that took place on or after September 30, 1996. 8 U.S.C. §1367 (d)(2)

B. LIMITS ON IMMIGRATION ENFORCEMENT ACTIVITY

1. ICE Enforcement in certain locations
    a. Immigration Court proceedings where an enforcement action leading to removal proceedings was initiated at a domestic violence shelter, rape crisis center, supervised visitation center, family justice center, victim services provider, or ***courthouse*** where an immigrant appears in connection with a protection order case, child custody matter, or other civil or criminal matter relating to domestic violence sexual assault, trafficking, or stalking, in which the immigrant has been

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subjected to certain violent crimes, the Immigration service must include a statement certifying that the agency has complied with 8 U.S.C. §1367.

b. The immigration agency must keep information relating to any self-petition case confidential and that the agency employees make no adverse determination regarding the immigrant using information furnished solely by an abuser or perpetrator. Pub.L. No 109-162, Section 825(c) of the Violence Against Women and Department of Justice Reauthorization Act of 2005, (H.R. 3402).

2. King County Policy

What information do you want about the King County policy about Immigration Presence?

VII. CONCLUSION

The effectiveness of court interventions can be improved with an understanding of the cultural and immigration legal barriers that face non-citizen litigants in both the civil and criminal court.

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